

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**SUSAN D. HOLCOMB**  
Claimant

VS.

**OLATHE MEDICAL SERVICES, INC.**  
Self-Insured Respondent

)  
)  
)  
)  
)  
)  
)

Docket No. 1,034,871

**ORDER**

Claimant requested review of the January 5, 2011<sup>1</sup> Award by Administrative Law Judge (ALJ) Marcia Yates Roberts. The Board heard oral argument on April 20, 2011.

**APPEARANCES**

Mark E. Kolich, of Lenexa, Kansas, appeared for the claimant. Michael P. Bandre, Overland Park, Kansas, appeared for self-insured respondent.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopted the stipulations listed in the Award. In addition, at oral argument, claimant acknowledged that she no longer contends that her rheumatoid arthritis condition is causally related to her work-related exposure to the mumps virus in April 2006.

**ISSUES**

The ALJ found claimant to have a 100 percent impairment for loss of hearing to her right ear as a result her work-related exposure to the mumps virus. The ALJ's Award specifically finds the claimant's workplace exposure to be an accident, as that term is defined by K.S.A. 44-508. She went on to find that claimant failed to meet her burden of proof that her other complaints including tinnitus, vertigo, trigeminal neuralgia, and

---

<sup>1</sup> A Order Nunc Pro Tunc was issued on Jan. 19, 2011 correcting the calculation paragraph of the Award on page 6.

rheumatoid arthritis are, within a reasonable degree of medical certainty, the result of her work-related injury.

The claimant requests review of the ALJ's Award and contends that the evidence as to her other conditions and their connection to the mumps virus she contracted while working is uncontroverted. Claimant asserts that the Award should be modified to include a 20 percent whole body impairment, a rating which was assigned by Dr. Koprivica and accurately reflects the entirety of claimant's residual and permanent impairments sustained as a result of the mumps.

Respondent initially argued (in its brief) that claimant's exposure to the mumps virus constitutes an occupational disease. But then, in its brief and at oral argument contends that the Award should be affirmed in all respects as there is no persuasive evidence to support claimant's contention that her tinnitus, vertigo and trigeminal neuralgia complaints are causally connected to her occupational exposure to the mumps virus.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The facts surrounding this claim are simple. Claimant had been employed by respondent as a nurse practitioner since August of 2000. While working at one of respondent's facilities in April 2006, claimant was exposed to a patient that was diagnosed with the mumps virus. A few days after this exposure, claimant herself came down with the virus.

She immediately recognized her symptoms, sought treatment and was diagnosed and placed into isolation. Unfortunately, within a very short period of time, claimant experienced a total loss of her hearing in the right ear. In spite of steroid medications and antiviral drugs, the hearing loss persists and based upon this record, it is uncontroverted that claimant sustained 100 percent hearing loss in her right ear, as that impairment is rated in the *AMA Guides*.<sup>2</sup> In fact, it appears that respondent does not contest the compensability of the hearing loss or of the resulting impairment of 100 percent.

Claimant has continued her employment with respondent, self accommodating her hearing loss by purchasing an electronic stethoscope which allows her to perform her work duties. However, she continues to have other symptoms which she attributes to the mumps virus.

---

<sup>2</sup> American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are to the 4th edition unless otherwise noted.

According to claimant, she suffers from tinnitus and vertigo. She has also developed a condition that has been diagnosed as trigeminal neuralgia, a painful nerve condition which waxes and wanes over time and affects the right side of her face. As of the Regular Hearing, the trigeminal neuralgia complaints had subsided, but claimant maintains that she has flare-ups periodically. The tinnitus and vertigo persist and according to claimant, are aggravated by her allergies.

Claimant was evaluated by Dr. Jay Zwibelman, a neurologist, who reviewed claimant's medical records and performed his own examination at respondent's request. He concluded that there was no correlation between the mumps virus and claimant's trigeminal neuralgia.<sup>3</sup> Dr. Zwibelman explained that he (and another identified co-worker) performed some research and could find nothing within the medical literature that would suggest there was such a causal connection. He allowed that trigeminal neuralgia has a viral cause, but there is simply no proof that the mumps virus is such a virus.

At her attorney's request claimant was evaluated by Dr. Brent Koprivica, a board certified emergency/occupational medicine physician, who reviewed her MRI, the previously performed audiograms and performed his own extraocular movement testing<sup>4</sup>. Dr. Koprivica noted that claimant presented not only with a 100 percent hearing loss in the right ear, but she had a host of other complaints. He diagnosed her with tinnitus, vertigo and chronic trigeminal neuralgia, which is also sometimes referred to as tic douloureux. Dr. Koprivica explained that when an adult is exposed to the mumps virus, the salivary glands become inflamed. He also explained that the virus can infect the surrounding nerves and cause a structural change which can cause consequences. Dr. Koprivica conceded that the eye movement test he performed during his examination was negative for vertigo, but that the test is not wholly determinative. In fact, he testified that one could spend a great deal of money to prove a patient does or does not have vertigo. Thus, for the most part, physicians take the patient's word that the symptoms are present.<sup>5</sup>

He went on to opine that the tinnitus, vertigo and the trigeminal neuralgia are all causally related to her exposure to the mumps virus. Dr. Koprivica assigned a total of 20 percent to the whole body for all of these conditions; a 6 percent whole body attributable to the hearing loss<sup>6</sup>, 5 percent whole body for the tinnitus, 10 percent whole body for the trigeminal neuralgia and 5 percent whole body for the vertigo. Although these ratings, when combined using the combined values chart of the *Guides*, total up to be more than

---

<sup>3</sup> Zwibelman Depo. at 7.

<sup>4</sup> Koprivica Depo. at 20.

<sup>5</sup> *Id.* at 24.

<sup>6</sup> This 6 percent whole body represents a conversion from the 100 percent permanent loss of hearing in one ear, pursuant to the 4<sup>th</sup> edition of the *Guides*.

20 percent, Dr. Koprivica concluded that there was some “overlap” and so he lowered the overall rating to a 20 percent.

The ALJ was apparently unpersuaded by Dr. Koprivica’s opinions or more persuaded by Dr. Zwibelman and assigned a 100 percent hearing loss to the right ear only, which is a scheduled injury under K.S.A. 44-510d. Her Award also makes it clear that she found claimant’s exposure to the mumps virus to be an accident, rather than an occupational disease.<sup>7</sup>

After considering the record as a whole, as well as the parties’ argument, the Board finds the ALJ’s Award should be affirmed in part and modified in part.

Although the classification of claimant’s work-related accident was initially an issue at the Regular Hearing, the parties’ briefs and oral arguments make it clear that this dispute has been abandoned. Respondent’s brief makes a cursory statement that there is a dispute as to “whether this was an accident or an occupational disease.”<sup>8</sup> But that same brief goes on to say that the ALJ “correctly decided the claim and the award ... should be affirmed”. And neither the respondent’s brief, nor oral arguments provided any insight or discussion as to why respondent believes the ALJ’s classification of this event as an accident was in error. Thus, the Board finds the ALJ’s conclusion that claimant’s exposure to the mumps virus in April of 2006 constitutes an accident should be affirmed.

The Board does, however, find the ALJ’s conclusion with respect to the nature and extent of claimant’s impairment must be modified. Claimant no longer asserts that her rheumatoid arthritis and/or Sjogren’s syndrome complaints are causally connected to her exposure to the mumps virus. Thus, the testimony of Drs. Katz and Anderson are no longer relevant for purposes of this appeal. Dr. Metz testified as to the extent of claimant’s hearing loss (100 percent), and its connection to the mumps virus, a contention that respondent does not contest. Thus, his testimony is now irrelevant to this appeal.

All that remains is the testimony of Dr. Zwibelman and Dr. Koprivica. Dr. Zwibelman only testified as to the causal connection between the mumps virus and claimant’s trigeminal neuralgia. He opined, based on a limited amount of research, that there was no connection between the neuralgic condition and the mumps virus, although he conceded that a virus could cause the trigeminal neuralgia. He offered no opinions as to the causal connection between vertigo or tinnitus and the mumps virus.

Given the facts of this case, the Board is not persuaded by Dr. Zwibelman’s testimony as to the lack of causal connection between claimant’s trigeminal neuralgia and

---

<sup>7</sup> ALJ Award (Jan. 5, 2011) at p 5.

<sup>8</sup> Respondent’s Brief at (filed Feb. 17, 2011).

the mumps virus. Simply because Dr. Zwibelman (or his co-worker) was unable to confirm the connection in the medical literature does little to advance or defeat the ultimate conclusion. Dr. Zwibelman's research approach was to see if there was any literature to confirm or defeat the temporal connection between claimant's exposure to the mumps virus and the onset of her trigeminal neuralgia symptoms. The record does not indicate how exhaustive that search might have been. And solely because neither he or the co-worker, who Dr. Zwibelman thought was more experienced at researching than he was, identified any article that identified a relationship between the two, he concluded that there was none. Yet, he could not explain the onset of the trigeminal neuralgia following her exposure to the mumps virus.

In contrast, is the testimony of Dr. Koprivica, who opined that in addition to the 100 percent loss of hearing on the right side, claimant has also sustained an impairment as a result of the tinnitus and the vertigo as well as the trigeminal neuralgia, all of which he attributes to her exposure to the mumps virus. Not only is this connection supported by the temporal presentation of the symptoms, but Dr. Koprivica explained how the inflammation that results from the swollen salivary glands can cause structural changes in the nerves, which leads to consequences, depending on which nerves are affected. Here, following her exposure to the mumps virus, claimant rather quickly lost her hearing and thereafter began to experience face pain (trigeminal neuralgia), vertigo and tinnitus. Claimant acknowledged that the trigeminal neuralgia had subsided although she suffers intermittent flare-ups. But the vertigo<sup>9</sup> and tinnitus persist.

Based upon this testimony and these facts, as well as the fact that no other physician provided any alternative impairment rating, the Board finds the ALJ's Award must be modified to reflect the 20 percent permanent impairment assessment assigned by Dr. Koprivica.

The Board acknowledges respondent's argument that a 100 percent loss of hearing should be the most that claimant receives and that by granting her any permanency for tinnitus, which is nothing more than ringing in the ears, claimant is, in essence, receiving more than the schedule allows.<sup>10</sup> The Board disagrees. As explained by Dr. Koprivica, the *Guides* provide for a separate whole body rating for tinnitus and vertigo, conditions for which claimant has been diagnosed. And the plain language of K.S.A. 44-510e compels the physicians to utilize the *Guides* for purposes of rating impairments, if those impairments are contained therein. Here, Dr. Koprivica has employed the *Guides* and assigned a 20 percent rating. No other physician has offered any rating to which the Board

---

<sup>9</sup> The Board acknowledges that Dr. Koprivica performed a single diagnostic test during his evaluation and that claimant did not, on that date, demonstrate vertigo. But the greater weight of the evidence is that this condition waxes and wanes from day to day. And that test standing alone is not determinative.

<sup>10</sup> K.S.A. 44-510d.

could compare. Accordingly, the Board adopts Dr. Koprivica's impairment assessment and the Award is modified to reflect the 20 percent to the whole body.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Marcia Yates Roberts dated January 5, 2011 is affirmed in part and modified in part as follows:

The claimant is entitled to 0.71 weeks of temporary total disability compensation at the rate of \$467.00 per week or \$331.57 followed by 83.00 weeks of permanent partial disability compensation at the rate of \$467.00 per week or \$38,761.00 for a 20 percent work disability, making a total award of \$39,092.57.

As of April 29, 2011 there would be due and owing to the claimant 0.71 weeks of temporary total disability compensation at the rate of \$467.00 per week in the sum of \$331.57 plus 83.00 weeks of permanent partial disability compensation at the rate of \$467.00 per week in the sum of \$38,761.00 for a total due and owing of \$39,092.57, which is ordered paid in one lump sum less amounts previously paid.

All other findings and conclusions contained within the ALJ's Award are hereby affirmed to the extent they are not modified herein.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of April 2011.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: Mark E. Kolich, Attorney for Claimant  
Michael P. Bandre, Attorney for Self-Insured Respondent  
Marcia Yates Roberts, Administrative Law Judge